

Depoe Bay City Council
Regular Meeting
Tuesday, February 4, 2003 - 7:00 PM
Depoe Bay City Hall

PRESENT: Mayor B. Silver, S. Scorpio, A. Brown, G. Romans, J. Brown,
M. Lavery

ABSENT: P. Taunton

STAFF: City Field Superintendent T. Owings, City Recorder P. Murray, Recording
Secretary S. Fox, City Attorney D. Gordon

I. PLEDGE OF ALLEGIANCE

Mayor Silver called for all to stand for the Pledge of Allegiance.

II. CALL TO ORDER

Mayor Silver called the meeting to order and established a quorum at 7:00 PM.

III. APPROVE MINUTES: January 17, 2003 Workshop Meeting and January 21, 2003 Regular Meeting

Motion 1: Alice Brown moved to approve the minutes of the January 17, 2003 Workshop
Meeting and the January 21, 2003 Regular Meeting as written. Romans seconded the motion.

Silver said it was moved and seconded, and called for discussion. There was none.

Vote: Motion 1 passed.

Ayes: Scorpio, A. Brown, Silver, Romans, J. Brown, Lavery

IX. ACCOUNTS PAYABLE

Motion 2: Romans moved to approve Accounts Payable as presented. Scorpio seconded the
motion.

Silver said it was moved and seconded, and called for discussion. There was a question about
the legality of the vote, due to lack of quorum because of abstentions; Silver said the majority
of available voting Councilors would prevail.

Vote: Motion 2 passed.

Ayes: Scorpio, Romans, J. Brown

Abstained: A. Brown, Silver, Lavery

V. PUBLIC INPUT

Debbie Davilla Chamber of Commerce: 1) Asked the Council's desire on whether the
Chamber needed to obtain a City business license. 2) Reported the Chamber's annual Citizen

of the Year Banquet and Silent Auction will be Saturday, March 8 at 6 PM at the Gleneden Beach Community Center. Tickets are \$15/each and \$25/couple. The theme is Beach Blanket Bingo, and is a costume event.

Roma Powis 410 Pine Court, passed sign-up sheets around to Councilors, asking them to sign up for various committees for the event.

Fran Recht 66 NE Williams, expressed concern over a decision made by the Council at the last meeting to light the spouting horn, on recommendation from the Parks Commission. She said light pollution is a quality of life issue, and lighting of the spouting horn would directly affect her. She requested more discussion on this issue before moving forward with it.

Mark Scott Pastor of Bayside Chapel, requested use of City Park on July 27 for an open community church event including a concert and barbeque; all activities will be free of charge.

VI. PUBLIC HEARING: Consideration of Removal of Larry Tyler from Planning Commission
Silver advised Councilors and the audience of the procedure for this hearing (copy attached to original of these minutes). He opened the public hearing by asking Gordon to present the petitioner's reasons why Tyler should be removed from the Planning Commission. Gordon reviewed allegations against Tyler regarding Conduct in Office and Conduct Not In An Official Capacity.

1) Conduct in Office

- a) Tyler presents anger toward participants in the Planning Commission process.
- b) Tyler exhibited inappropriate behavior while participating in a meeting as a Planning Commissioner; e.g. shaking his head or rolling his eyes at what he considered a wrongful presentation of fact or argument, doing a "thumbs up" when presented with good information, clapping quietly at a presentation.
- c) Tyler followed another Planning Commissioner's lead.
- d) Tyler engaged in use of profane language in a public forum.
- e) Tyler exhibited (unidentified) bias in his actions as a Planning Commissioner.
- f) Tyler skipped important Planning Commission meetings, specifically a combined City Council/Planning Commission meeting because of personal business.
- g) Tyler did not apply himself in the course of his work as a Planning Commissioner.

2) Conduct Not In An Official Capacity

- a) Tyler failed to obtain a legally-required City Business License.
- b) Tyler exhibited an inconsistency between how he views his own requirements and requirements of others.
- c) The City was deprived of revenue as a result of Tyler's failure to obtain a City Business License.
- d) Tyler falsified information in his business license application.
- e) Tyler used obscene gestures in public.
- f) Tyler used profanity in public meetings.
- g) Tyler filed frivolous complaints against others.
- h) Tyler engaged in filming others in an intimidating manner in a public forum.

Gordon closed the presentation for Tyler's removal by stating that those wishing Tyler removed from the Planning Commission would submit that 1) Public officers should be held to a higher standard than others, and 2) Conduct that a person engages in reflects on others and on the City, and that the items identified rise to the level of being misconduct for which Tyler should be removed.

Silver called for testimony in support of the petition to remove Tyler from the Planning Commission.

Roma Powis 410 Pine Court, concurred with everything Gordon said. She did not believe Tyler acted in an adult and professional manner.

There was no further testimony in support of removing Tyler from the Planning Commission. Silver then asked Gordon to present the respondent's reasons why the petition should be denied. Gordon again used Conduct in Office and Conduct Not In An Official Capacity for his responses.

1) Conduct in Office

- a) Tyler attended 93 of 115 Planning Commission meetings over the six years he has been on the Commission.
- b) A memo to the Council from Dick Johnson dated 1/30/03 (copy attached to original of these minutes) supported Tyler.
- c) Until the time of the business license application, there were no complaints against Tyler as a Planning Commissioner.
- d) Tyler knowingly participates in and is prepared for Planning Commission meetings.
- e) Tyler does not follow leads of other Commissioners.
- f) Tyler brings expertise to the Planning Commission as a builder, which is valuable to the Commission.
- g) Tyler is a homeowner, and brings those concerns to the Commission as a resource.
- h) Tyler does not use profanity in Planning Commission meetings.
- i) Tyler does not exhibit inappropriate anger in Planning Commission meetings.
- j) Tyler intervened between an angry member of the public and a Planning Commissioner.
- k) Tyler does not exercise bias in reaching Planning Commission decisions.

2) Conduct Not In An Official Capacity

Gordon said this is a difficult standard to identify, and questioned how to apply a vague standard to a particular official without giving an indication of what the standard might be. He noted that past Council practice has been to warn people of inappropriate behavior.

- a) The business license issue has been resolved.
- b) There was one instance where Tyler was provoked into displaying an obscene gesture. The incident was not relevant to his performance as a public official.

Gordon closed the presentation for denial of the petition to remove Tyler from the Planning Commission by stating that Tyler is diligent, attends meetings, and is not biased. He further

stated that volunteers are valuable to the community and should not be discouraged by processes such as this.

Silver called for testimony in support of denying the petition to remove Tyler from the Planning Commission.

Larry Tyler 935 Pine Avenue, said he wanted to remain on the Planning Commission. He likes the work, knows the town, and wants to contribute his skills to the community in this way. He noted that due process requires an impartial tribunal, and said he had previously asked Romans and Scorpio to step down from this decision, because he does not believe them to be impartial. He showed two short videos which he felt demonstrated his innocence. He asked Murray to provide brief testimony on his behalf.

Betty Langdon 1635 Tinninnabulary, concurred with Gordon's presentation in support of Tyler.

Mary Alice Harley 1155 Walking Wood, thought different standards were being applied to different people. She questioned why there was no declaration of bias for this hearing. She did not see this hearing as due process. She said you must have a defined standard of conduct and inform public officials of the standard before holding them to it. She said while it's OK to hold public officials to a higher standard, standards need to be consistently applied.

Bob Ward, Drake in Oregon Society, 70 NE Hwy 101, concurred with statements made by Gordon.

Chris Nowark 425 Pine Court, concurred with Gordon, Langdon, and Harley.

Fran Recht, concurred with everything said in Tyler's defense. She said Tyler is very professional and non-reactive.

Ron Nowark 425 Pine Court, spoke in support of Tyler, concurring with everything said in Tyler's defense. He stands behind previous statements he's made.

There was no further testimony in support of denying the petition to remove Tyler from the Planning Commission. Silver responded to Harley's question about declaration of bias by saying that upon advice of legal counsel it was determined that such declarations were not relevant in this type of decision. There was a procedural question about a section in Robert's Rules of Order related to disciplinary action, specifically regarding the filing of frivolous reports against innocent persons, and whether this hearing should have been conducted in an executive session. Gordon clarified that the intent of Robert's Rules is as a guideline, and that very specific ORS guidelines on public and executive sessions must be met. He also stated that complaints were filed but not prosecuted; they have been characterized by some as frivolous, but law enforcement has not characterized them as frivolous. When asked if a Council decision to remove Tyler from the Planning Commission would be a defensible legal decision, Gordon responded that it would. A Council decision not to remove would not be challenged. Deliberations followed.

Motion 3: Lavery moved to deny the petition to remove Larry Tyler from the Planning Commission. Jack Brown seconded the motion.

Silver said it was moved and seconded, and called for discussion.

Amendment: Romans amended the motion to include the following conditions of probation: no obscene gestures or foul and obscene language in Council Chambers. Alice Brown seconded the amendment.

Silver said it was moved and seconded, and called for discussion. A concern about violating Tyler's freedom of speech was expressed. Gordon said the statute does not provide for probationary terms, and provided legal guidance on probation and misconduct. The filing of false charges against other members of the Planning Commission and other public officials was discussed. Gordon said if approved, this would become a standard of misconduct sufficient to warrant removal from office.

Vote: Amendment to Motion 3 failed due to lack of majority.

Ayes: Scorpio, Alice Brown, Romans

Noes: Silver, Jack Brown, Lavery

Gordon clarified if original Motion 3 were to fail, it would not mean that Tyler was removed from the Planning Commission.

Vote: Original Motion 3 failed due to lack of majority.

Ayes: Silver, Jack Brown, Lavery

Noes: Scorpio, Alice Brown, Romans

Motion 4: Scorpio moved to set a date for making this decision at the next Regular Council Meeting where all Councilors are present. Alice Brown seconded the motion.

Silver said it was moved and seconded, and called for discussion. There was clarification that Councilors can vote either way at the next vote. Silver set a condition that Taunton listen to the tapes of tonight's meeting before the next meeting.

Vote: Motion 4 passed.

Ayes: Scorpio, Alice Brown, Silver, Romans, Jack Brown

Noes: Lavery

Silver called a recess at 9:03. Meeting reconvened at 9:14.

VII. NEW BUSINESS

A. Interview Applicants for City Commissions and Committees

Harbor Commission applicant Frank Button and Traffic Safety Commission applicant I. Louis Trapani came forward to tell about themselves and why they were interested in participating. There were no other applicants present.

B. Appointments to Fill Vacancies on City Commissions and Committees
Ballots were filled out, signed, and turned in. Murray tallied the votes and announced the results. All Councilors voted to accept applicants as follows:

Betty Langdon for Planning Commission Position #2

Peter Cameron for Traffic Safety Commission Position #1

Motion 5: Scorpio moved to accept the canvass of votes and appoint applicants to their respective positions. Alice Brown seconded the motion.

Silver said it was moved and seconded, and called for discussion. There was none.

Vote: Motion 5 passed.

Ayes: Scorpio, Alice Brown, Silver, Romans, Jack Brown, Lavery

C. Request for Waiver of Fees for Community Hall - E. Printz & K. Beckman
Concern was expressed over the separation of church and state on a submitted application (copy attached to original of these minutes). Gordon advised decisions should not be based on "preferred" or "not preferred" groups. Murray was asked to provide criteria on waiver of fees, and stated that in general fees have been waived if the use directly benefits Depoe Bay.

Motion 6: Lavery moved to grant the request to waive fees for the Community Hall. Alice Brown seconded the motion.

Silver said it was moved and seconded, and called for discussion. It was noted that the group was seeking no financial gain.

Vote: Motion failed.

Ayes: Jack Brown, Lavery

Noes: Scorpio, Alice Brown, Silver, Romans

Silver clarified that the group will be allowed to use the Community Hall, without waiver of fees.

D. Mission Statement - Review of Draft

There was a consensus of the Council to review the draft Mission Statement (copy attached to original of these minutes) for adoption at the next Regular Council Meeting.

E. Proposed Res. #315 - Support SDCs for Schools, Police, Fire, and Libraries

Hearing no objection, Murray was directed to read all proposed Resolutions (copies attached to original of these minutes) by title only. There was opportunity for questions and discussions on all proposed Resolutions.

Motion 7: Lavery moved to approve proposed Resolution #315 as written. Scorpio seconded the motion.

Silver said it was moved and seconded, and called for discussion. There was none.

Vote: Motion 7 passed.

Ayes: Scorpio, Alice Brown, Silver, Romans, Jack Brown, Lavery

F. Proposed Res. #316 - Support Repeal of 20 Year Land Supply Rule
A concern was expressed over possible conflict of interest between conditions of Res. #315 and proposed Res. #316.

Motion 8: Alice Brown moved to approve proposed Resolution #316 with the following amendment under the second WHEREAS: "~~1. Assessing growth or impact fees on new development for the purpose of providing schools, police stations, libraries, and fire stations; 2. Imposing indefinite moratoria on new development...~~" Lavery seconded the motion.

Silver said it was moved and seconded, and called for discussion. There was none.

Vote: Motion 8 passed.

Ayes: Alice Brown, Silver, Romans, Jack Brown, Lavery

Noes: Scorpio

G. Proposed Res. #317 - Support Repeal or Revision of Expedited Land Division Law
Betty Langdon spoke in support of this resolution.

Motion 9: Romans moved to adopt proposed Res. #317 as written. Lavery seconded the motion.

Silver said it was moved and seconded, and called for discussion. There was none.

Vote: Motion 9 passed.

Ayes: Scorpio, Alice Brown, Silver, Romans, Jack Brown, Lavery

H. Proposed Res. #318 - Support LOC Activities and Efforts to Preclude Local Pre-Emptions on Transient Lodging Taxes

Motion 10: Lavery moved to adopt proposed Res. #318. Alice Brown seconded the motion.

Silver said it was moved and seconded, and called for discussion. There was none.

Vote: Motion 10 passed.

Ayes: Scorpio, Alice Brown, Silver, Romans, Jack Brown, Lavery

I. Proposed Res. #319 - Opposing Legislation Which Would Pre-empt Local Street Utility Fees

Motion 11: Scorpio moved to adopt proposed Res. #319. Alice Brown seconded the motion.

Silver said it was moved and seconded, and called for discussion. There was none.

Vote: Motion 11 passed.

Ayes: Scorpio, Alice Brown, Silver, Romans, Jack Brown, Lavery

VIII. UNFINISHED BUSINESS

A. Wooden Boat and Crab Feed - Use of Harbor Facilities

Motion 12: Jack Brown moved to approve the Chamber of Commerce's request to utilize the harbor bay parking lot, segments of Dock 3, and the Community Hall in support of the 2003 Wooden Boat Show and Crab Feed, as recommended by the Harbor Commission. Lavery seconded the motion.

Silver said it was moved and seconded, and called for discussion. There was none.

Vote: Motion 12 passed.

Ayes: Scorpio, Alice Brown, Silver, Romans, Jack Brown, Lavery

B. Staff Report: Bob Ward - Big Whale Cove Preservation

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The City Planner's response to the Council's request for input on this item was read into the record (copy attached to the original of these minutes). Gordon clarified how perceived pre-judging could affect potential buyers and development of the property. He noted that the current property owner agrees that at least part of the property should be preserved.

Motion 13: Romans moved to direct Staff to prepare a letter of endorsement for historical preservation for the northern part of Big Whale Cove, to include the concerns of Mr. Ward and concurrence by the property owner/developer. Alice Brown seconded the motion.

Silver said it was moved and seconded, and called for discussion. A liability concern was expressed. Bob Ward was asked to clarify his conversations with the current property owner. He stressed the short timeline the Council had to reach a decision on this.

Vote: Motion passed.

Ayes: Alice Brown, Silver, Romans, Jack Brown, Lavery

Noes: Scorpio

Murray clarified that the letter will be brought back to the next Regular Council Meeting.

C. Staff Report - Martin Driveway Access

Owings reported that the street level in front of the Martin's driveway was raised during the Ainslee Avenue Project. He met with the owners, who requested two 3'-high retaining walls. In

response to a question, Owings said that City crew is normally not allowed on private property. He recommended blacktopping the driveway as an alternate, less expensive resolution to their problem. There was question whether the City was responsible for aiding a property owner in accessing a public street pursuant to street improvements, and if so, to what extent. It was noted that the owners would be responsible for future maintenance if the City were to provide assistance.

Motion 14: Lavery moved to blacktop the Martin's driveway as recommended by Owings, at a cost not to exceed \$885. Scorpio seconded the motion.

Silver said it was moved and seconded, and called for discussion. A member of the audience advised that the owners are currently liable to be ticketed for parking in front of their house.

Vote: Motion 14 passed.

Ayes: Scorpio, Alice Brown, Silver, Romans, Jack Brown, Lavery

D. Schedule Workshop Meeting: Preservation of Volunteers / Elected Officials' Training Hearing no objection, Staff was directed to advertise public meeting workshops for the purposes of Preservation of Volunteers and Elected Officials' Training on Tuesday, February 18, 2003 at 5:30 PM, and Tuesday, February 25, 2003 at 7:00 PM.

IX. CORRESPONDENCE

There were two items of correspondence (copies attached to original of these minutes): 1) The Bayside Chapel requested to reserve City Park on July 27, 2003 for a church-sponsored free community event. Parks Commission Chair recommendations included a request for the group to clean up their garbage, rent porta-potties if necessary, and a possible donation to the parks. The pastor's involvement in town events was noted. A concern was expressed about setting precedence for park reservation requirements.

Motion 15: Lavery moved to grant Bayside Chapel's request for use of City Park on July 27, 2003, including electricity and staging, with recommendations from Parks Commission except for the request for a contribution. Jack Brown seconded the motion.

Silver said it was moved and seconded, and called for discussion.

Amendment: Alice Brown amended the motion to include a requirement for the pastor to present his application to the Parks Commission. Amendment died due to lack of second.

Mary Alice Harley expressed concern over the separation of church and state, stating her objection to the use of public funds for a religious event. She was informed that the church allows the KidZone, a City-sponsored endeavor, to operate there five days a week at no charge. It was recommended to articulate that the reservation was an exchange for services.

Motion 15, restated: Lavery moved to grant Bayside Chapel's request for use of City Park on July 27, 2003, including use of City electricity and staging, with the recommendations from the

Parks Commission Chair except for a contribution, as a way of saying “thank you” for the chapel allowing Depoe Bay children go there five days a week for KidZone activities while their parents are at work. Jack Brown seconded the restated motion.

Silver asked if there was further discussion. It was noted that KidZone activities taking place at the chapel are not church-oriented.

Vote: Motion 15 passed.

Ayes: Alice Brown, Silver, Romans, Jack Brown, Lavery

Noes: Scorpio

CORRESPONDENCE, continued: 2) A letter from Cascades West Council of Governments asking for nomination or re-nomination of a Depoe Bay representative to the CWACT Technical Committee. Owings is the current representative.

Motion 16: Romans moved to re-appoint Terry Owings to the Council of Governments Cascades West Area Commission on Transportation (CWACT) Technical Committee. Alice Brown seconded the motion.

Silver said it was moved and seconded, and called for discussion. There was none.

Vote: Motion 16 passed.

Ayes: Scorpio, Alice Brown, Silver, Romans, Jack Brown, Lavery

X. LIAISON OFFICERS' REPORTS

Jack Brown reported that: 1) The Harbor Commission met and discussed using leftover funding from the new ramps for a handicapped ramp, or floats for under Dock 1 (which is sinking). 2) He will present draft material for his Washington D.C. trip to the Harbor Commission at a special meeting on February 12, and to the Council on February 18.

Alice Brown reported the Parks Commission will meet February 19 at 5:30 PM.

Lavery and Scorpio had no report.

XI. CITY STAFF REPORT

Owings reported that 1) Electrical conduit was laid for a lighting system at the south end of Whale Park when the project was first done. The Parks Commission has been talking about some kind of lighting for a long time. PUD cannot use their system because of connection exposures. He will ask the Parks Commission what they would like to do. 2) There was a landslide at the reservoir. Requests for proposals (RFPs) were sent out to three contractors. Results will be in by February 14. There was no immediate danger.

Murray reported that 1) In response to a question posed by Lavery at the last Council meeting: “Could a liaison could be a voting member of the Traffic Safety Commission?”, Ord. #215 established the Traffic Safety Commission and was amended by Ord. #223. An

ordinance amendment would be required to include the Council liaison as a voting member. Since there was one applicant interviewed at this meeting for the Commission and there were two additional applications received earlier this evening, it was determined that such an action was not necessary at this time. 2) Business License Exemption for the Depoe Bay Chamber of Commerce was scheduled as an item for the next Regular Council Meeting agenda. 3) The Lincoln County School Board has been invited to Depoe Bay to host a meeting to allow Depoe Bay residents to get first hand information about what's going on with the school district's budget. They will be at the Community Hall Thursday, February 13, at 7:00 PM.

XII. COUNCIL COMMENTS

Scorpio requested Whale Park Development be a future agenda item. There was discussion about communication. She was advised to attend Parks Commission meetings. The Parks Commission liaison was directed to take the issue of citizen concerns to their next meeting.

Alice Brown asked if anything would be done about a letter of request for funding appropriations from Rep. Darlene Hooley, and was told the harbor seawall would be submitted.

Silver reported that Jack Brown will be interviewed on CNBC at 1:50 PM tomorrow afternoon for comments on Secretary of State Colin Powell's report to the U.N. Security Council.

Larry Tyler questioned why a particular letter of support was not brought up during his hearing or correspondence. He was told Councilors had received a copy of it.

XIII. ADJOURN

There being no further business, the meeting was adjourned at 11:27 PM.

Mayor Bruce R. Silver

Silver Fox, Recording Secretary